

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 4 August 2005

Page 10 of 13

2. REMARKS / DISCUSSION OF ISSUES**BEST AVAILABLE COPY**

Claims 1-17 are pending in the application. Claims 10-17 are new. It is believed that no additional fee is due for the added claims as the total number of claims is less than twenty and there are fewer than 3 independent claims.

Unless indicated otherwise, claims are amended for non-statutory reasons: to correct one or more informalities, remove figure label number(s), and/or to replace European-style claim phraseology with American-style claim language.

I. Rejection under 35 U.S.C. § 112, Second Paragraph

The rejection of claim 1 under this section of the Code is believed to be moot in view of the amendment to the claim. Withdrawal of this rejection is respectfully requested.

II. Rejection under 35 U.S.C. § 103(a)

Claims 1,2,3 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edler, et al.* in view of *Kleijn, et al.*

A proper rejection under 35 U.S.C. § 103(a) requires that **all** of the claimed elements be found in the applied art. If a **single** claimed element is not found in the applied art, a prima facie case of obviousness cannot be properly established.

Furthermore, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is a teaching, suggestion or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine* 5 USPQ 2d 1596 (1988). However, hindsight is never an appropriate motivation for combining references and/or the requisite knowledge available to one having ordinary skill in the art. To this end, relying upon hindsight knowledge of applicants' disclosure when the prior art does not teach nor suggest such knowledge results in the use of the invention as a template for its own reconstruction. This is wholly improper in the determination of patentability. *Sensonics Inc. v Aerosonics Corp.*, 38

Atty. Docket No. NL 010477

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 4 August 2005

Page 11 of 13

USPQ 2d 1551-1554 (1996), citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303.

Claim 10 features:

"...a sinusoidal **estimation unit** adapted to estimate the sinusoidal code data representing the segment $x_m(n)$ from the received samples $x_m(0), \dots, x_m(L-1)$);..."

Claim 1 includes a similar feature.

The Office Action notes that the reference to *Edler, et al.* does not disclose a sinusoidal estimation unit for estimating the sinusoidal code data representing the segment $x_m(n)$ from the received samples $x_m(0), \dots, x_m(L-1)$. The Examiner contends that this is known concept in the art as taught by *Kleijn, et al.*

First, it is noted that the noted portion of *Kleijn, et al.* discloses sinusoidal coders. To wit, section 8.2 is drawn to a description of sinusoidal coders and a technique using a Fourier series to reconstruct a signal. There is no description of a sinusoidal estimation unit adapted to estimate sinusoidal code data representing a segment from the received sample as claimed. For at least this reason, it is respectfully submitted that the reference to *Kleijn, et al.* lacks at least the disclosure of at least one of the features of independent claims 1 and 10. Accordingly, a *prima facie* case of obviousness has not been established and this rejection should be withdrawn.

Second, the requirements of a *prima facie* case of obviousness include the teaching, suggestion or motivation to combine references found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The rejection merely notes that the noted feature of claims 1 and 10 is missing from the reference to *Edler, et al.* and contends that it is a well known concept in the art, noting *Kleijn, et al.* There is no proffered teaching, suggestion or motivation supplied. Rather, the Examiner merely states that **because** the feature is (allegedly) known, it would have been obvious to combine the references to realize the invention. This is wholly improper. The Examiner is merely attempting to cobble a rejection from the references and applies hindsight motivation to adhere the pieces from the applied references. As noted, the reference to *Kleijn, et al.* lacks at least

Atty. Docket No. NL 010477

BEST AVAILABLE COPY

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 4 August 2005

Page 12 of 13

the noted feature of claims 1 and 10. Moreover, there is no teaching, suggestion or motivation provided to combine these references provided as required. Therefore, this rejection is improper and should be withdrawn.

Applicants note that if the teaching, suggestion or motivation to combine the references, or the assertion that the noted feature of claims 1 and 10, or both are from the Examiner's personal knowledge, an affidavit under Rule 104(d)(2) is respectfully requested. If neither the required art nor the affidavit can be produced and properly applied, withdrawal of the rejection is earnestly solicited.

Claims 4-8 depend directly or indirectly from claim 1. For at least the reasons set forth above, it is respectfully submitted that a *prima facie* case of obviousness has not been established. As such, and if for no other reason, the rejection of claims 4-8 is improper as well.

III. Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

Atty. Docket No. NL 010477

BEST AVAILABLE COPY

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 4 August 2005

Page 13 of 13

Respectfully submitted,



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January 4, 2006
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Atty. Docket No. NL 010477